

**SERVED AUGUST 11, 2021**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER BRIAN  
FEELEY, POLICE OFFICER MATTHEW ROSIELLO,  
POLICE OFFICER KENNETH ANDERSON,  
SERGEANT WILLIAM DIAB, DETECTIVE SHANIEL  
MITCHELL, AND POLICE OFFICER STEPHEN  
MINUCCI,

Defendants.  
-----X

**DECLARATION OF  
CHRISTOPHER D. DELUCA  
IN SUPPORT OF  
DEFENDANTS' MOTION  
FOR SUMMARY  
JUDGMENT**

17-CV-06457 (EK) (JRC)

**CHRISTOPHER D. DELUCA**, an attorney duly admitted to practice in the State of New York and in this Court, declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, that the following is true and correct:

1. I am a Senior Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York, attorney for defendants City of New York, Police Officer Kenneth Anderson, Sergeant William Diab, Police Officer Brian Feeley, Police Officer Stephen Minucci, Detective Shaniel Mitchell, and Police Officer Matthew Rosiello. As such, I am familiar with the facts stated below and submit this declaration to place the relevant documents on the record in support of defendants' Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit A is a true and correct copy of portions of the September 17, 2020 Deposition Transcript of plaintiff James Benbow in connection with the instant matter.

3. Annexed hereto as Exhibit B is a true and correct copy of portions of the October 9, 2020 Deposition Transcript of defendant Police Officer Kenneth Anderson in connection with the instant matter.

4. Annexed hereto as Exhibit C is a true and correct copy of portions of the October 9, 2020 Deposition Transcript of non-party witness Detective Ruben Cespedes in connection with the instant matter.

5. Annexed hereto as Exhibit D is a true and correct copy of portions of the November 19, 2020 Deposition Transcript of defendant Police Officer Stephen Minucci in connection with the instant matter.

6. Annexed hereto as Exhibit E is a true and correct copy of portions of the October 14, 2020 Deposition Transcript of defendant Sergeant William Diab in connection with the instant matter.

7. Annexed hereto as Exhibit F is a true and correct copy of portions of the October 27, 2020 Deposition Transcript of defendant Police Officer Matthew Rosiello in connection with the instant matter.

8. Annexed hereto as Exhibit G is a true and correct copy of portions of the October 14, 2020 Deposition Transcript of defendant Detective Shaniel Mitchell in connection with the instant matter.

9. Annexed hereto as Exhibit H is a true and correct copy of portions of the December 7, 2020 Deposition Transcript of defendant Police Officer Brian Feeley in connection with the instant matter.

10. Annexed hereto as Exhibit I is a true and correct copy of Detective Stilianos Panagopoulos's DD5 entry dated March 7, 2015 for New York City Police Department

(“NYPD”) Complaint Report #2015-084-01027 in connection with the instant matter, which sets forth, among other things, Jason Marshall’s observations and actions on March 6 and 7, 2015.

11. Annexed hereto as Exhibit J is a true and correct copy of the NYPD Property Voucher from the March 7, 2015 arrest of plaintiff in connection with the instant matter, which sets forth the clothing plaintiff was wearing.

12. Annexed hereto as Exhibit K is a true and correct copy of an excerpt from defendant Detective (then Police Officer) Shaniel Mitchell’s Memobook, which sets forth, among other things, that Officer Mitchell drove RMP #1464 to the scene of the shooting.

13. Annexed hereto as Exhibit L is a true and correct copy of a video surveillance file titled “180 Nassau Street” from March 7, 2015 which depicts, among other things, plaintiff and Eric Bradley walking on the sidewalk on Nassau Street, plaintiff turning around and running in the opposite direction on the sidewalk, and plaintiff making a right turn from the sidewalk, heading to the street.

14. Annexed hereto as Exhibit M is a true and correct copy of an NYPD Crime Scene Sketch, which depicts, among other things, the locations of Officers Feeley, Rosiello, Anderson, and plaintiff on Nassau Street on March 7, 2015.

15. Annexed hereto as Exhibit N is a true and correct copy of portions of the Transcript of Eric Bradley’s Grand Jury testimony in connection with the instant matter.

16. Annexed hereto as Exhibit O is a true and correct copy of Detective Susan Forte’s Crime Scene Unit (“CSU”) Scene Report dated March 7, 2015 for NYPD Complaint Report #2015-084-01027 in connection with the instant matter, which sets forth, among other things, that the NYPD recovered one loaded chrome Interams Star .45 caliber semi-automatic pistol from the scene of the shooting.

17. Annexed hereto as Exhibit P is a true and correct copy of a photograph of the loaded chrome Interams Star .45 caliber semi-automatic pistol recovered from the scene of the shooting.

18. Annexed hereto as Exhibit Q is a true and correct copy of the NYPD Property Voucher from the March 7, 2015 arrest of plaintiff in connection with the instant matter, which sets forth that the Interam Star .45 caliber semi-automatic pistol was vouchered.

19. Annexed hereto as Exhibit R is a true and correct copy of excerpts from plaintiff's medical records from Kings County Hospital in connection with the instant matter, which sets forth, among other things, that plaintiff suffered a gunshot wound to his left lower back, two small gunshot wounds to his right flank, and a superficial wound to his left inner arm on March 7, 2015.

20. Annexed hereto as Exhibit S is a true and correct copy of an NYPD CSU diagram, which sets forth, among other things, the locations of gunshot wounds on plaintiff's body.

21. Annexed hereto as Exhibit T is a true and correct copy of the NYPD Arrest Report associated with plaintiff's arrest, dated March 8, 2015 which sets forth, among other things, that plaintiff was arrested and charged with violating New York Penal §§ 265.03(3) (Criminal Possession of a Weapon in the Second Degree), and 120.14(1) (Menacing in the Second Degree).

22. Annexed hereto as Exhibit U is a true and correct copy of the Criminal Court Complaint filed against plaintiff in the Kings County Criminal Court, Docket No. 2015KN01452, charging plaintiff with violating New York Penal §§ 265.03(1)(B) (Criminal Possession of a Weapon in the Second Degree), 265.03(3) (Criminal Possession of a Weapon in the Second Degree), and 265.01(1) (Criminal Possession of a Weapon in the Fourth Degree).

23. Annexed hereto as Exhibit V is a true and correct copy of the Superior Court Information filed in the Supreme Court of New York, Indictment No. 01849-2015, Kings County, wherein the Grand Jury of Kings County accused plaintiff of the crimes of, *inter alia*, Criminal Possession of a Weapon in the Second Degree (265.03(3)), Criminal Possession of a Firearm (265.01-B), and Criminal Possession of a Weapon in the Fourth Degree (265.01(1),

24. Annexed hereto as Exhibit W is a true and correct copy of the April 24, 2018 Transcript of plaintiff's guilty plea to Count 2 of the Indictment, Criminal Possession of a Firearm, in violation of New York Penal Law § 265.01-B, in the Supreme Court of New York, Kings County, Criminal Term, Part 16, before the Honorable Bruce M. Balter.

25. Annexed hereto as Exhibit X is a true and correct copy of the April 14, 2021 Decision of the Second Department of the New York State Appellate Division vacating plaintiff's guilty plea and granting plaintiff's omnibus motion to suppress physical evidence.

26. Annexed hereto as Exhibit Y is a true and correct copy of plaintiff's Notice of Claim in connection with the instant matter.

27. Annexed hereto as Exhibit Z is a true and correct copy of a Notice of 50-H Hearing in connection with the instant matter.

28. Annexed hereto as Exhibit AA is a true and correct copy of portions of the Transcript of Jason Marshall's Grand Jury testimony in connection with the instant matter.

Dated: New York, New York  
August 11, 2021

GEORGIA M. PESTANA

Corporation Counsel of the City of New York  
*Attorney for City of New York, Police Officer  
Kenneth Anderson, Sergeant William Diab, Police  
Officer Brian Feeley, Police Officer Stephen  
Minucci, Detective Shaniel Mitchell, and Police  
Officer Matthew Rosiello*  
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By:



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Christopher D. DeLuca  
*Senior Counsel*  
Special Federal Litigation

cc: Aymen Aboushi, Esq. (Via Email)  
*Attorney for Plaintiff*  
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EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER BRIAN  
FEELEY, POLICE OFFICER MATTHEW ROSIELLO, POLICE  
OFFICER KENNETH ANDERSON, SERGEANT WILLIAM  
DIAB, DETECTIVE SHANIEL MITCHELL, AND POLICE  
OFFICER STEPHEN MINUCCI,

Defendants.

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IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

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